



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
804-698-4000

MEMORANDUM

TO: Regional Directors
Regional Air Compliance Managers
Regional Air Permit Managers
Regional Enforcement Managers
Central Office Air Managers

CC: Jeff Steers, Director of Central Operations

FROM: Michael G. Dowd, Director, Air & Renewable Energy Division *MGD*

SUBJECT: ACG-014: Air Compliance Guidance for Violations of 9 VAC 5 Chapter 40 Part II Article 37 and Related Federal Rules in Accordance with EPA Letters regarding No Action Assurance dated September 13, 2018

DATE: September 14, 2018

Purpose:

The purpose of this guidance is to direct Virginia Department of Environmental Quality (DEQ) staff to utilize appropriate levels of enforcement discretion related to alleged violations of air regulations at gasoline dispensation operations in accordance with two EPA No Action Assurance (NAA) letters (provided as attachments to this document).

Specifically, on September 13, 2018, Susan Parker Bodine (EPA Assistant Administrator) provided David Paylor (DEQ Director) letters regarding No Action Assurance for the Loading of Tank Fuel Trucks at Petroleum Distribution Terminals in Virginia and for the Use of Vapor Recovery Systems in Virginia Related to Hurricane Florence.

Questions or comments concerning this guidance should be directed to DEQ's Office of Air Compliance Coordination.

Applicability:

This guidance is applicable to Virginia stationary sources subject to the following regulations:

- 9 VAC 5 Chapter 40 Part II Article 37 – Emissions Standards for Petroleum Liquid Storage and Transfer Operations
- 40 CFR 60 Subpart XX – Standards of Performance for Bulk Gasoline Terminals
- 40 CFR 63 Subpart R – National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
- 40 CFR 63 Subpart Y – National Emission Standards for Marine Tank Vessel Loading Operations
- 40 CFR 63 Subpart CC – National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries
- 40 CFR 63 Subpart BBBBBB – National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

Implementation:

During severe weather events, the distribution of fuel may be particularly impacted and dramatically impeded by evacuation activities and damage to infrastructure and flooding. Petroleum distribution operations may have a need to respond outside of standard requirements when loading and unloading tanker trucks and when using vapor control systems. Two examples are as follows:

- Operation of larger numbers of tanker trucks may be necessary to provide adequate fuel to impacted areas, which may include tanker trucks that may not be registered with distribution terminals or have documentation demonstrating compliance with requisite testing for tank tightness.
- Operation of vapor combustion units and/or vapor recovery units may not be practical or possible on emergency power or during power outages impacting terminal operations.

Generally, DEQ air compliance and enforcement staff should consider all facts of a case and use enforcement discretion as appropriate to address identified noncompliance. However, in specific cases when DEQ receives from EPA No Action Assurance (NAA) determinations, additional considerations should be made.

Therefore, in accordance with the aforementioned NAA letters dated September 13, 2018, DEQ air compliance and enforcement staff should use enforcement discretion to address identified noncompliance occurring from September 13, 2018 through September 18, 2018.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 13 2018

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

David K. Paylor
Virginia Department of Environmental Quality
1111 E. Main Street, Suite 1400
Richmond, Virginia 23219

RE: No Action Assurance for the Loading of Tank Fuel Trucks at Petroleum Distribution Terminals in Virginia

Dear Director Paylor:

This letter is in response to the need for a No Action Assurance (NAA) to facilitate the distribution of fuel to the areas of Virginia impacted by Hurricane Florence. Specifically, because the shipment to some areas of critically needed fuel supplies has been dramatically impeded by the evacuation process and because damage to infrastructure and flooding is imminent, it is necessary to rely on tanker trucks in order to distribute fuel to these areas. I understand that because of the large number of tanker trucks that will be needed to provide an adequate supply of fuel to these areas, some tanker trucks may not be registered with distribution terminals as having completed all of the requisite testing for tank tightness and have the documentation to prove it as required by the Clean Air Act's New Source Performance Standards (NSPS), the National Emissions Standards for Hazardous Air Pollutants (NESHAP), and any counterpart in the Virginia State Implementation Plan (SIP).

The need for this request is to address severe fuel shortages that have resulted from Hurricane Florence and its impact on fuel distribution systems in Virginia. In light of this emergency situation, EPA will exercise its discretion not to pursue enforcement for violations of the tank tightness and documentation requirements of 40 C.F.R. Part 60, Subpart XX, 40 C.F.R. Part 63, Subpart R, and any counterpart in the Virginia SIP. This NAA is in effect commencing September 13, 2018, and terminates on September 18, 2018, at 11:59 PM EDT. EPA reserves the right to revoke or modify the NAA if the EPA believes that such action is necessary to protect public health and the environment. This NAA does not apply to any other federal requirements that may apply to regulated activities other than those listed above.

As a condition of this no action assurance, tank truck owners and operators shall ensure that all trucks meet all other relevant Federal and state safety standards. Nothing in this NAA is intended to override state or local authorities.

The issuance of an NAA for this period of time is in the public interest. Through today's NAA, the EPA is continuing its commitment to address the very difficult circumstances caused by Hurricane Florence.

If you have any questions about this NAA, please contact Phillip A. Brooks, at 202-564-0652 or brooks.phillip@epa.gov.

Sincerely,



Susan Parker Bodine
Assistant Administrator

cc: Cosmo Servidio, Regional Administrator, EPA Region 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 13 2018

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

David K. Paylor
Virginia Department of Environmental Quality
1111 E. Main Street, Suite 1400
Richmond, Virginia 23219

RE: No Action Assurance for the Use of Vapor Recovery Systems in Virginia Related to Hurricane Florence

Dear Director Paylor:

This letter is in response to the need for a No Action Assurance (NAA) relating to loading and unloading of fuel at bulk gasoline, marine, and rail loading terminals, and associated truck loading racks in the State of Virginia. Due to operational issues imminently expected to result from Hurricane Florence, including the loss of power, damage to vapor recovery devices at fuel loading and unloading terminals, and/or the need to utilize fuel loading/unloading facilities that are not equipped with vapor recovery/combustion devices, an NAA is needed to allow the loading and unloading of fuel without the use of a vapor recovery device or vapor combustion device as required by the New Source Performance Standards (NSPS), the National Emission Standards for Hazardous Air Pollutants, and the Gasoline Terminal Vapor-Tight Control Procedure, a State-Implementation Plan (SIP)-approved requirement. *See* 40 C.F.R. Part 60, Subpart XX and 40 C.F.R. Part 63, and Subparts R, Y, CC, BBBB, and any counterpart in the Florida SIP. The need for this request is to address severe fuel shortages that have resulted from damage caused by Hurricane Florence to the fuel distribution systems in Virginia.

In light of the emergency in Virginia, the EPA will exercise its discretion not to pursue enforcement for violations of the vapor recovery requirements for fuel loading and unloading under 40 C.F.R. Part 60 Subpart XX and Part 63 Subparts R, Y, CC, BBBB, and any counterpart in the Virginia SIP under the conditions set forth below. These regulations apply only to bulk gasoline terminals, pipeline breakout stations, marine tank vessel loading operations, and gasoline loading racks, as those terms are defined in the regulations cited above. This NAA is in effect commencing September 13, 2018, and terminates September 18, 2018 at 11:59 PM EDT. EPA reserves the right to revoke or modify the NAA if the EPA believes that such action is necessary to protect public health and the environment. This NAA does not apply to any other federal requirements that may apply to regulated activities at these facilities other than those listed above.

Nothing in this exercise of enforcement discretion relieves any person of the obligation under law, if any, to report emissions from the operation of equipment covered by this action. Pursuant to this NAA, the EPA will not enforce violations of the NSPS and NESHAP applicable to these facilities in Virginia, subject to the following conditions:

1. The owner/operator notifies EPA prior to initiation of loading and unloading activities using this NAA (by phone or email listed below).
2. Vapor Recovery or combustion devices are used to the greatest extent practicable when available and operable;
3. Owners/operators continue to make best efforts to repair/replace the vapor recovery systems, in an expeditious manner or switch operations to facilities with operational vapor recovery/combustion devices as soon as practicable.
4. Owners/operators exercise good air pollution control practices as required by any and all applicable standards.
5. Owners/operators minimize, to the greatest extent practicable, loading operations near residential areas when vapor recovery/combustion devices are not in operation.
6. Owners/operators comply with all conditions imposed by State or local authorities on these emergency operations.
7. Along with the notice required under paragraph 2 above, owners/operators must provide the EPA with their best estimate of the projected hourly and daily VOC emissions rates from operation without vapor recovery/combustion devices; and
8. Owners/operators must keep records that demonstrate the daily volume of fuel loaded and unloaded without the use of vapor recovery/combustion devices.

Only those terminal operations with damaged or inoperable vapor recovery/combustion devices, or that are not equipped with otherwise required vapor recovery/combustion devices, may take action in accordance with the terms of this NAA, and only to the extent needed until the expiration of this NAA or at such time as vapor recovery/combustion controls are operable or available, whichever comes first. EPA reserves the right to amend or revoke this NAA at any time.

The notifications identified above should be sent via email to Amelie Isin, at isin.amelie@epa.gov.

The issuance of an NAA for this period of time is in the public interest. Through today's NAA, the EPA is continuing its commitment to address the very difficult circumstances caused by Hurricane Florence. Nothing in this NAA is intended to over-ride Virginia state or local authorities.

If you have any questions or if facilities in Virginia need additional time to repair or replace their vapor recovery systems, please contact Phillip A. Brooks, at 202-564-0652 or brooks.phillip@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Susan Parker Bodine". The signature is fluid and cursive, with the first name "Susan" being the most prominent.

Susan Parker Bodine
Assistant Administrator

cc: Cosmo Servidio, Regional Administrator, EPA Region 3